

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL ACTION NO. 1:14-CV-049-RLV-DCK**

BRIAN M. CHIVERS,)
)
 Plaintiff,)
)
 v.)
)
 CAROLYN W. COLVIN,)
 Acting Commissioner of Social Security,)
)
 Defendant.)
 _____)

ORDER

THIS MATTER IS BEFORE THE COURT on “Plaintiff’s Motion For Attorney Fees Under § 406(b) Of The Social Security Act” (Document No. 20) filed September 16, 2015. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion, the record, and applicable authority, the undersigned will grant the motion with modification.

By the instant motion, Plaintiff’s counsel seeks an award of attorney fees under the Social Security Act, 42 U.S.C. § 406(b), which provides that a “court may determine and allow as part of its judgment a reasonable fee . . . not in excess of 25 percent of the total of the past due benefits to which claimant is entitled by reason of such judgment.” It appears that the Social Security Administration (“SSA”) has determined that Plaintiff’s past due benefits are \$77,693.90 for December 2010 through July 2015. (Document No. 20-2, p.3). The SSA has withheld \$19,423.48 from Plaintiff’s past-due benefits to pay her representative(s). (Document No. 20-2, p.3). Plaintiff’s counsel now seeks an award of \$12,000.00 in attorney’s fees. (Document No. 20, p.1).

The undersigned notes that “Plaintiff’s Petition For Attorney Fees Under The Equal Access To Justice Act 28 U.S.C. § 2412” (Document No. 18) sought, and was allowed, attorney’s fees in

the amount of \$4,023.75. Plaintiff's counsel now asserts that the \$4,023.75 in EAJA attorney fees will be reimbursed to Plaintiff upon award and receipt of the § 406(b) fees. (Document No. 20, p.2)

Recent caselaw provides that a court should review contingent-fee agreements, such as the one here, for reasonableness. Griffin v. Astrue, 1:10cv115-MR, 2012 WL 3155578 at *2 (W.D.N.C. August 2, 2012) (citing Gisbrecht v. Barnhart, 535 U.S. 789 (2002) and Mudd v. Barnhart, 418 F.3d 424 (4th Cir. 2005)).

Based on the foregoing, the undersigned has determined that a slight downward adjustment is appropriate here and that a reasonable fee, that still recognizes the risks inherent in this type of representation, is an award of \$11,250.00.

IT IS, THEREFORE, ORDERED that "Plaintiff's Motion For Attorney Fees Under § 406(b) Of The Social Security Act" (Document No. 20) is **GRANTED, with modification**. The Court awards Plaintiff's counsel fees in the amount of **\$11,250.00**.

SO ORDERED.

Signed: December 17, 2015



David C. Keesler
United States Magistrate Judge

